VALLIAPPA v. KESARMAL & ANOR.

[Orig. Civ. Juris. (Taylor, J.) May 22, 1951]

[Selangor — Civil Suit No. 88/50]

Duress — Titles to Land (Occupation Period) Ordinance, 1949 — Land Code — Doctrines of Equity — Restitution — Rules of Etiquette and Practice 1948 — Stamp objections taken by advocates — Meaning of "going to the root".

This was an action under section 27 of the Titles to Land (Occupation Period) Ordinance to set aside a transfer of land. The transfer was procured by means of threats uttered by an armed Japanese official.

It was contended for the defendants that this did not amount to duress within the meaning of the Ordinance and that in any event the defendants had no notice of the threats.

Held, that the Titles to Land (Occupation Period) Ordinance, 1949 imports the general doctrines of law and equity relating to duress with some extension, and with such other modifications only as are necessary for its special purposes. The party setting aside a transfer must ordinarily restore the purchase money.

It is not permissible for an advocate to take objection to the admissibility of a document on the ground that it is not duly stamped unless either he is instructed for the Treasury or the document goes to the root of the subject-matter. A document does not go to the root merely because it is potentially decisive of a material fact.

Case referred to:—

(1) *Wilkins v. Kannammal* (1951) M.L.J. 99.

WITNESS ACTION.

R. Ramani and *Ek Teong* for the plaintiff.

F. G. Charlesworth and *A. K. Sen* for the defendants.

Cur. Adv. Vult.

Taylor, J.: — (after analysing the evidence). The broad and general effect of the oral testimony was in favour of the plaintiff; subsequent analysis confirmed this impression and the documentary evidence finally convinced me that the plaintiff's version is substantially true. He signed the agreement because the Japanese official said "You had better obey." Such words, spoken by a person in authority, import a threat; the plaintiff had already been detained temporarily for enquiry by the Japanese on one occasion and in the circumstances a reasonable man of firm character might well fear, as the plaintiff feared, that on another occasion he would not be freed so easily. Whether the Jap meant his threat seriously, or could have carried it out, is immaterial; the question is how the plaintiff's mind was affected.

The point was taken that there was no suggestion of duress at the time of completion when the actual transfer was signed; it is true there was no fresh overt duress but the plaintiff's position was worse than ever. He could be sued on the agreement but he could not sue the Klana*. It was suggested that the fact that he did not complain to Mr. Bok is inconsistent with the truth of his evidence but how could Bok have relieved his fears? Would he have said: — "Let them arrest you! If they do so, send me word and I will quickly procure your release?" There would have been no means of sending word and there was no habeas corpus. A man who was born in a free atmosphere and has never breathed any other can hardly imagine life under a totalitarian regime. He may be told but he does not realise. Words cannot convey the feel of the jungle to an esquimau. This failure to understand is one of the greatest dangers of our time. The safeguards of liberty are attained only after centuries of struggle — but they can be lost overnight.

The truth is that the effect of the threat continued; the plaintiff was in exactly the same danger in the solicitor's office as he had been in at the Astana; if he had refused to sign the transfer, the Klana might have influenced the Japanese to act against him.

There was an alternative submission that the transaction is voidable even if the defendants had no knowledge of the duress. The action is brought under section 27(5) of the Titles to Land (Occupation Period) Ordinance, 1949 which is in two parts. Paragraph (a), which deals with threats uttered by a Japanese, does not mention notice whereas paragraph (b), which deals with threats by a Malayan to report another Malayan to the Japanese, expressly limits the remedy to cases where the transferee had notice. The argument is that where, as here, the duress was in fact exerted by a Japanese, notice is immaterial. The issue was expressly raised by amendment of the pleadings. On my view of the facts, this point of construction does not arise in this case, so I leave the question entirely open.

As regards the relief which may be given under this special Ordinance, Counsel for the plaintiff submitted that the statute defines duress and links up its consequences with the Land Code in such a way that if the transferee's title is defeated he loses everything and the other party is not required to restore the purchase money; the doctrines of equity, he said, are largely inapplicable to registered land. I do not accept this argument. In the first place the Ordinance does not define duress anew; it says: "duress includes....". In my view this imports the ordinary law and equity regarding duress and extends the meaning of the term to include cases where advantage was taken of the enemy occupation to exert unfair pressure of a kind

* *The Klana:* Tengku Musa Eddin, now styled Tengku Klana, was installed as Sultan of Selangor during the Japanese Occupation.

which is not available under the rule of British law and therefore might not be covered by the authorities. Secondly, as to registration, it is perfectly true that some of the earlier local cases suggest that the Torrens law is incompatible with, and excludes, many of the doctrines of equity but these cases cannot now be fully supported. I think they failed to distinguish adequately between rights in equity and equitable estates in land. The effect of later, and weightier, authorities was summarised only a few days ago by the Court of Appeal in a judgment in which I took part. (*Wilkins v. Kannammal*[1]), "The Torrens law is a system of conveyancing; it does not abrogate the principles of equity; it alters the application of particular rules of equity but only so far as is necessary to achieve its own special objects." I think that decision applies to the Occupation Titles Ordinance which is expressly linked to the Land Code.

Where the parties meet face to face there must always be an oral agreement before a written agreement can be made. Where investigation of title is necessary an interval elapses between the written agreement and the conveyance. Under the Torrens system the procedure is simplified; the parties often proceed direct from the oral agreement to the conveyance. Hence, the statute must deal with conveyances rather than agreements, if it is to be effective. In the present case there was a written agreement followed after an interval by a transfer; the delay was not for investigation but in order to make the necessary arrangements with M.A.M.* to discharge the encumbrance. In substance, this suit is a suit to set aside the purported agreement of 9th July. Reversing the transfer is consequential relief. The same result could be achieved in equity by a decree in personam ordering the defendants to reconvey. The provisions of the Ordinance regarding defeasance of title are, in this instance, ancillary but in any event the relief is in its nature equitable and the party avoiding the agreement must restore any advantage which he received.

If the plaintiff recovers the land he must refund the $75,300, Japanese currency; the value of this sum must be ascertained but it is not a debt falling to be revalued within the terms of the Debtor and Creditor (Occupation Period) Ordinance, 1948. In my view, however, it does fall within the principle of that statute. The object is to restore the parties as nearly as possible to their original positions. The sum to be repaid is notional debt, deemed in equity to have accrued in 1943. Equity follows the law. The value must therefore be ascertained by the scale.

* *M. A. M.*: Name of Chettiar Firm.

The defendants claim interest on the money but they do not say at what rate. In general, interest accrues only by contract or under some provision of law. This is certainly not a contractual debt and I cannot find any applicable rate. I am therefore of opinion that this sum does not bear interest before judgment.

It was admitted that if the defendants are in the wrong they must account for the rents and profits of the land.

It remains to deal with the stamp objection taken by the defendants to the acknowledgment of 5th November 1950. The Court raised the preliminary question whether it was proper for Counsel to take such an objection. The local rule on this point is contained in paragraph 4 of Gazette Notification No. 3406/48. It is contrary to etiquette "unless such objection goes to the root of the subject matter of the suit." Counsel contended that because this document might be decisive of one point in the case (i.e. whether the option was cancelled) the objection went to the root. But in any case where facts are in dispute one document may turn the scale. This argument would nullify the rule. The mere fact that a document is relevant and material as evidence does not take it to the root of the subject matter. This document is not vital or even necessarily decisive of the issue to which it relates. The plaintiff might have been able to prove his case without it, though certainly it would have been more difficult.

The English practice is more rational. There, Counsel are not allowed to take a stamp objection unless it goes to the validity of the document itself; the rule is mentioned, but not fully stated, in the Annual Practice for 1949 at page 3691. A barrister may not take an ordinary stamp objection, even if instructed solely for that purpose, unless the brief is for the Crown. He may not take part in the discussion unless invited to do so by the Court.

However imprecise the wording of the local rule may be, the principle of the matter is clear. We are dealing with evidence. Subject to a few exceptions the real probative value of a document is in no way affected by stamps. Inadmissibility for want of a stamp is not a rule of evidence. It is a wholly artificial rule designed to protect the revenue. When the Registrar stops a document he is acting as a revenue officer — not assisting the Court to analyse evidence. The question is between the party and the Treasury — not between the party and his adversary in the suit. Here, the defendants' counsel were not instructed for the Treasury and should not have taken it upon themselves to raise the matter.

For all these reasons I give judgment for the plaintiff, setting aside the transfer with costs and ordering an enquiry to ascertain the amounts to be paid and offset.

Judgment for the plaintiff.

In re ESTATE OF CHIA ENG SAY, (DECEASED); THE BRITISH MALAYA TRUSTEE & EXECUTOR CO., LTD. v. CHIA KIM LIAN (f) & 2 ORS.

[Orig. Civ. Juris. (Spenser-Wilkinson, J.) May 21, 1951]

[Singapore — Originating Summons No. 123 of 1949]

Distribution — Advancement by Testator — Statute of Distributions — Whether local Customs can be considered in interpreting the Statute — Value of Shares at the time of allotment — Unproductive Shares — Interest.

The question raised in this application was whether or not certain allotments of shares in a private limited company and in a public limited company by the deceased in his lifetime to his sons were to be treated as advancements under the Statute of Distributions. It was admitted that there was no valuable consideration given by the sons on the allotment of the shares to them but it was argued inter alia that in interpreting the Statute of Distributions, regard should be had to the religion and customs of the local inhabitants of the Colony and that in this case consideration should be given to the Chinese custom of preferring sons to daughters.

Held, (1) that in interpreting the Statute of Distributions the Court is not at liberty to consider any contrary customs there may be amongst the local inhabitants; (2) that the allotment of the shares in this case comes within the definition of provision for the sons and the values of the allotments were sufficiently large to raise the presumption that they were in the nature of advances.

Cases referred to:—

(1) *Edwards v. Freeman* 24 E.R. 803 at p. 807.
(2) *Choo Eng Choon v. Neo Chan Neo & Ors.* 12 S.S.L.R. 120.
(3) *Lee Joo Neo v. Lee Eng Swee* 4 Kyshe 325.
(4) *Khoo Hooi Leong v. Khoo Chong Yeo* (1930) S.S.L.R. 127 at p. 137.
(5) *Taylor v. Taylor* L.R. 20 Eq. 155 at p. 157.
(6) *In the matter of the Estate of Abdullah Saleh Shooker, Deceased* O. S. No. 87 of 1948 (Unreported).
(7) *Hatfield v. Minet* 8 Ch. D. 136 at 143.
(8) *In re Davy* (1908) 1 Ch. 61.
(9) *Safeah v. K. Y. Adaykalvan Chitty* 8 S.S.L.R. 102.

ORIGINATING SUMMONS.

N. A. Mallal for the plaintiffs.

T. W. Ong for the defendants.

R. H. Green for Chia Goh Seng who represented the sons and for Chia Teck Soon ordered to be served.

Cur. Adv. Vult.

Spenser-Wilkinson, J. : — This is an application by the British Malaya Trustee & Executor Co., Ltd., as administrators of the estate of Chia Eng Say deceased, for directions as to whether or not certain allotments of shares made by the deceased during his lifetime to his nine sons are to be treated as advancements under the Statute of Distributions and the value thereof brought into hotchpot and, if so, for consequential directions regarding valuation of the shares and the interest, if any, to be added.

On the 26th of July 1940 the deceased formed a private limited company known as Chia Eng Say and Sons Finance Limited with a capital of one million dollars divided into 1,000 shares of $1,000 each and at about the same time he converted his granite quarry business into a public limited company called the Singapore Granite Quarry Ltd. with a share capital of $350,000 divided into 7,000 fully paid up shares of $50 each.

Shares in Chia Eng Say and Sons Finance Limited to the following nominal values were allotted to the deceased's sons :—

Chia Teck Soon	$70,000
Chia Teck Swee	30,000
Chia Teck Beng	40,000
Chia Teck Nia	50,000
Chia Teck Seng	50,000
Chia Gah Seng	30,000
Chia Goh Lee	10,000
Chia Teck Khim	50,000
Chia Teck Leong	30,000

In addition to the above allotments in the private company shares to the nominal value of $10,000 in the Singapore Granite Quarry Ltd. were allotted to Chia Teck Soon and Chia Teck Nia.

At the time when the above shares in Chia Eng Say and Sons Finance Limited were allotted to the sons 600 shares were allotted to the deceased himself and the remaining 40 shares were allotted to three of his grandsons so that all the shares in this company were held by the deceased and his sons and grandsons between them. Although the Singapore Granite Quarry Limited was a public company no invitation was ever issued to the public to subscribe and practically all the shares in this company were allotted between the deceased himself, Chia Eng Say and Sons Finance Limited and the two sons abovementioned. Four shares went to sons-in-law and two to a nephew and 24 out of a total of 7,000 shares went to persons who may or may not have been relatives of the deceased.